

Exhibit A

IN THE DISTRICT OF THE UNITED STATES OF AMERICA
FOR THE SOUTHERN DISTRICT OF ILLINOIS

**D.W.K., Jr. and parents Mary &
Daniel Kaleta,**)
)
)
Plaintiff(s),) Case No. **14-847-NJR-SCW**
)
vs.)
)
ABBOTT LABORATORIES, INC.,)
)
Defendant(s).)

**TRIAL DAY 1
(a.m. session)**

BE IT REMEMBERED AND CERTIFIED that heretofore on **03/02/2015**,
the same being one of the regular judicial days in and for the
United States District Court for the Southern District of
Illinois, **Honorable Nancy J. Rosenstengel**, United States
District Judge, presiding, the following proceedings were
recorded by mechanical stenography; transcript produced by
computer.

REPORTED BY: Molly N. Clayton, RPR, FCRR, Official
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APPEARANCES:

John Eddie Williams and John T. Boundas of Williams
Kherkher Hart Boundas LLP, 8441 Gulf Freeway, Suite 600,
Houston, TX 77017; and,

Phillip Sampson of Bracewell & Giuliani LLP, 711
Louisiana, Suite 2300, Houston, TX 77002; and,

Kenneth T. Fibich of Fibich Hampton Leebron Briggs &
Josephson, LLP, 1150 Bissonnet, Houston, TX 77005; and,

FOR DEFENDANT: Dan H. Ball of Bryan Cave - St. Louis, 211
North Broadway, One Metropolitan Square, Suite 3600, St. Louis,
MO 63102; and,

Paul F. Strain and B. Michael MacWilliams of Venable LLP,
750 East Pratt St, Suite 900, Baltimore, MD 21202

Day 1-a.m., Pg. 3

INDEX OF WITNESS EXAMINATION

DX CX R-DX R-CX

No witness testimony.

INDEX OF EXHIBITS

EXHIBIT DESCRIPTION Id'D Rev'd
No exhibits identified or received.

MISCELLANEOUS

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(Court convened)

(Following proceedings held outside presence of Venire 1-29:)

THE CLERK: *D.W.K., Jr., et al., versus Abbott
Laboratories, Inc.*, Case Number 14-cv-847, is called for the
first day of civil jury trial.

Will the parties identify themselves for the record?

MR. FIBICH: Good morning, your Honor, Tommy Fibich,
on behalf of the plaintiffs.

THE COURT: Good morning, Mr. Fibich.

MR. WILLIAMS: Good morning. John Eddie Williams,
plaintiffs.

THE COURT: Mr. Williams.

MR. BOUNDAS: John Boundas, for the plaintiffs.

THE COURT: Good morning, Mr. Boundas.

MR. SAMPSON: Phillip Sampson, plaintiffs, your Honor.

THE COURT: Good morning.

MR. BALL: Dan Ball, for Abbott.

THE COURT: Good morning, Mr. Ball.

MR. MacWILLIAMS: Good morning, your Honor. Michael
MacWilliams for Abbott.

THE COURT: Good morning, Mr. MacWilliams.

MR. STRAIN: Good morning, your Honor, Paul Strain,
for the defense.

THE COURT: Good morning, Mr. Strain.

Well, good morning, everyone, and welcome. I hope

1 medicines. Most of them are completely useless for the kind
2 of epilepsy Mrs. Kaleta has, unfortunately.

3 In fact, there's a doctor who's going to come in
4 here to testify for the plaintiffs, and he's going to admit
5 that there are only two others that have even a theoretical
6 possibility of helping Mrs. Kaleta back at the time she was
7 pregnant with [REDACTED] only two others. They're called
8 Lamictal and Topamax. And you might have to double them up,
9 which, of course, is bad to take two rather than one.

10 But just to show you what the doctors would have to
11 choose from, those two drugs, the FDA categorized as a C.
12 So if a doctor felt, *Should I try Lamictal? Should I try*
13 *Depakote?* and wanted to know which one has more risk, the
14 FDA's telling them which one has more risk.

15 You look at the Depakote warning label. You look
16 at the Lamictal warning label, and then you know. You know
17 what the relative risk is. There's no, there's just no
18 mystery about it. So -- and that was in the warning label
19 from the time Depakote began, so way back. All the doctors,
20 whoever prescribed it, dealt with Mrs. Kaleta with Depakote,
21 knew all this.

22 For example, you heard the name Dr. Taber.
23 Dr. Taber -- you heard it this morning and I mentioned it
24 again a moment ago. Dr. Taber testified that he knew
25 Depakote had a spina bifida risk that was not present in

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had, is "safer drugs cannot be used or are ineffective."

Same thing. Same thing.

They had to have that in France because the doctors there didn't have the benefit of what Dr. Taber and Dr. McGonagle and the United States doctors had, and that is Category D.

And remember what Counsel said, the good things they said this morning about this label they were showing you when they were talking about the label in France. They talked about Abbott taking away the protection that the people had. *When Abbott brought the drug over here, they took away that protection for our women of childbearing years.* Not so. That protection stayed because the FDA's Category D was in every -- was in every Depakote label.

When Mr. Williams this morning was talking about that French label, he said it was essentially saying, "Try the others first." And that is the warning that Abbott chose not to bring to America. They said that this was the honest way to do it. This was the honest way to do it. This is what Abbott did by putting Category D on the warning label for every American doctor. That's exactly what Abbott did, and it was the honest way to do it. That's why you didn't hear anything about Category D this morning.

So with the FDA -- I'll go back to the -- here if I may. There. But the FDA in charge of that black box label,

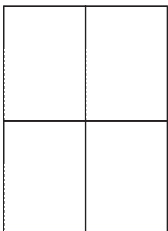
1 them. All drugs.
2 You heard the word "registry", Abbott should have
3 done a registry. The question is: How could that change
4 this case? All the registry could have done, if that's what
5 the doctor suggested back in 1982, was delay a warning and
6 then eventually confirm the 1 to 2 percent, which Abbott was
7 way ahead of them. Abbott put it in the warning label
8 without confirmation.
9 Talk about studies, Abbott's Depakote already had
10 the warning in there. When the FDA saw a need for a study
11 about an epilepsy medicine and spina bifida, it didn't need
12 to study Depakote because Depakote was already warning.
13 Here's 1991, this is an FDA study. They needed to find out
14 if Tegretol also caused spina bifida. The FDA determined it
15 did, but FDA didn't need to study Depakote because Depakote
16 was already warning the doctors about it.
17 And if the claim is that there was a registry or
18 study needed to compare medicines, well, the black box
19 already did that, being that it was the only one of any
20 appropriate medicine.
21 There are a lot of studies done. The hospitals do
22 them, universities do them, and this field of birth defects,
23 most of them are government sponsored. You see a lot of
24 them coming out of Europe where they have the government
25 healthcare and all the centralized statistics.

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3185 1 married and they started planning a pregnancy again. 3187
2 Now her testimony is, they started planning the
3 pregnancy very soon, within a couple of years, after all
4 of those 1993 warnings about bad birth defects if you get
5 pregnant. And about in 1994, in 1995, after the birth,
6 Dr. Taber continuing the warnings; every one of those
7 doctors, there are actually four different doctors
8 involved in warning her in 1993.
9 And I asked her, I know she said she doesn't
10 remember anything but I asked her, looking at the medical
11 evidence of the warnings given to you, I know you say you
12 don't remember, but don't you think that would be
13 seriously bad news that you got while you were pregnant?
14 I mean, it's the kind of news, if you are then within a
15 couple of years planning to get pregnant again, you're not
16 going to forget that.
17 So, when she's planning to get pregnant with her
18 husband in 1996, 1997, 1998, she said it went back two or
19 three years before [REDACTED] was born, so went back to either
20 '97 or '96, so not long after the first birth and all
21 those warnings, they were planning a pregnancy. Remember,
22 Dr. Taber said, *don't do that without talking to me so we*
23 *can plan for it and adjust your medicines, your Depakote.*
24 And I just want us to think for a minute because
25 we're dealing with this testimony by Mrs. Kaleta that she



<p>1 can't remember anything now. So, we'll accept that. But³¹⁸⁸ 2 it's not a question of whether she remembers it now, it's 3 a question of whether she knew it full well then, before 4 she got pregnant with D . As this new married couple 5 are talking about having a baby, fresh from all those 6 warnings about spina bifida and bad birth defects, how 7 could they not discuss that together? Anyone would. 8 Anyone would. It would not only be on her mind but on his 9 mind. And sure, I don't question their decision to have a 10 child. That's certainly their right to do that. But they 11 would have known and discussed those risks. And there's 12 no testimony that they did not. 13 Okay, we get to 1999 and the pregnancy with [REDACTED]. 14 Now, in 1999, Mrs. Kaleta went to Dr. Ralston, who is a 15 general practitioner, a family doctor. And she told him 16 she hadn't been to see a neurologist since Dr. Taber about 17 five years ago. She had had some grand mal seizures. She 18 was frightened to leave her home. And I can understand 19 that. And, but she didn't tell Dr. Ralston she and her 20 husband were trying to get pregnant. She didn't tell him 21 that. And he actually started Tegretol at that time. 22 Decreased the Depakote a little bit and started Tegretol. 23 Then he set her up with an appointment with a neurologist 24 down the road. 25 But on May 15, she called in, Mrs. Kaleta called</p>	3190
<p>1 in, saying she needs a pregnancy test, she's missed --³¹⁸⁹ 2 she's late and worried about Tegretol. Now see, she 3 wasn't on Tegretol, she had been taken off Tegretol during 4 that first pregnancy because it wasn't working. So, for 5 all those warnings and the every time warnings by Dr. 6 Taber after that pregnancy, she wasn't on Tegretol, she 7 was on Depakote. Now, why was she asking about pregnancy 8 risks with Tegretol and not Depakote? I think it's pretty 9 clear. It's because she knew about pregnancy risks with 10 Depakote. I think it's pretty clear. 11 And then when she did see a neurologist, Dr. 12 McGonagle, she confirmed that she has been aware of the 13 risks of birth defects with Depakote. There could not be 14 a clearer case of warnings given and warnings received. 15 There could not be a clearer case. And you can't brush 16 that aside by saying Dr. McGonagle is irrelevant. And 17 that is an absolute bar to their claim. Absolute bar to 18 their claim. 19 I wanted to put up one thing so there's not any 20 question about it, because Mrs. Kaleta testified she can't 21 remember. I don't think it matters. I don't think we 22 need to focus on that because whether she remembers now or 23 not, it's obvious she knew then. But there was a question 24 by Mr. Fibich to Dr. Morrell saying, hasn't the epilepsy 25 hurt her memory? And Dr. Morrell said, not with juvenile</p>	3191